Supreme Court, U.S.
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No. 09-779

IN THE

Supreme Court of the United States

ELMON WALTERS, ALIX PROVENCE, CHARLENE BLACKSHEAR, CEDRIC JORDAN and all others similarly situated,

Petitioners,

vs.

AMERICAN COACH LINES OF MIAMI, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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COUNTER STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

1. Did the Eleventh Circuit err in following settled law, which holds that the Secretary of Transportation has jurisdiction over interstate commerce, including in-state transportation which forms a part of the practical continuity of movement across state lines?

2. Did the Eleventh Circuit err in holding that the "incidental to air" exemption from the Secretary of Transportation's jurisdiction is an exemption from economic regulation only, not an exemption from safety regulations such as maximum-hour laws?

LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

Petitioners' list of parties to the proceeding is partially incorrect. Petitioners identify six individuals who are not Petitioners in this action, and who were not parties to the Eleventh Circuit Appeal. Those individuals are: (1) Barrett, Teddy; (2) Harper, Dwayne; (3) Hernandez, Ricardo Nunez; (4) Moran, Jome; (5) Sinclair, Charlie; and (6) Smith, Callisto. The remainder of the list of Petitioners is correct.

Pursuant to Supreme Court Rule 29.6, Respondent states that the following are parent entities of American Coach Lines of Miami, Inc.:

American Coach Lines, Inc.

Coach Am Group Holdings, Corp.

Coach Am Holdings, Corp.

Coach America Group Holdings, LP

Coach America Group, Inc.

Coach America Holdings, Inc.

CUSA, LLC

Fenway Partners Capital Fund III, L.P.

KBUS Holdings, LLC

In addition, Respondent states that no publicly held corporation owns 10% or more of its stock.

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STATEMENT OF THE CASE

Respondent American Coach Lines of Miami, Inc. ("ACLM") is a motor carrier that provides for-hire ground transportation of passengers. (Petitioners' Appendix at 2) Petitioners are or were ACLM bus drivers. ACLM does not pay any of its drivers an overtime premium because ACLM believes all of its drivers are exempt from the overtime requirements of the Fair Labor Standards Act ("FLSA") under the motor carrier exemption. *Id.*

ACLM provides transportation service between Florida and other states, as well as transportation within the state of Florida. *Id.* The Eleventh Circuit found that ACLM falls under the jurisdiction of the United States Department of Transportation ("DOT") because, among other reasons, ACLM performs a sufficient number of trips outside the state of Florida to trigger such jurisdiction. (Petitioners' Appendix at 13)

ACLM is party to a written contract with Royal Caribbean Cruise Lines ("RCCL") to provide ground transportation services to RCCL cruise line passengers. (Petitioners' Appendix at 3-4) ACLM has or had similar, but unwritten, agreements with Costa Cruises and Princess Cruises to perform similar services. (Petitioners' Appendix at 43) Under these agreements, ACLM provides airport-to-seaport and seaport-to-airport ground transportation for cruise line passengers to and from Miami and Fort Lauderdale airports to and from the Port of Miami and Port Everglades in Fort Lauderdale. The distance between these airports and seaports does not exceed a 25-mile radius. (Petitioners' Appendix at 2-3)

In addition, ACLM has arrangements with tour operators, travel agents, and other entities that charter buses, pursuant to which ACLM transports passengers to and from the local airports to and from local hotels or other destinations. (Petitioners' Appendix at 44) Of the 63 Plaintiffs in the district court case, 48 (76%) drove some type of airport or airport-seaport transfer during the relevant period from August 2004 through December 2007. (Petitioners' Appendix at 80) The majority of the Plaintiffs who had not driven passengers to and from seaports and airports were employed by ACLM for a short period of time. *Id.* The district court found that, with the exception of ACLM's university shuttle bus drivers (who are not Petitioners in this case), all of ACLM's drivers could reasonably be expected to drive ACLM's airport or airport-seaport trips. (Petitioners' Appendix at 81-82) The district court also found that these trips were in interstate

commerce within the meaning of the Motor Carrier Act. (Petitioners' Appendix at 82) Accordingly, the district could held that Petitioners are covered by the motor carrier exemption. (Petitioners' Appendix at 83)

The Eleventh Circuit affirmed, holding that ACLM's airport-seaport trips are in interstate commerce and, thus, trigger the Secretary of Transportation's jurisdiction and the motor carrier exemption. In particular, the Eleventh Circuit held that: (1) interstate commerce includes in-state transportation which forms a part of the practical continuity of movement across state lines; (2) the "incidental to air" exemption is an exemption from economic regulation only, and is irrelevant to the motor carrier exemption analysis; and, (3) thus, all Petitioners are covered by the motor carrier exemption. (Petitioners' Appendix at 25, 30) Petitioners now contend that: (1) the DOT has no jurisdiction over transportation which does not cross state lines; and, (2) the "incidental to air" exemption is a complete exemption from DOT jurisdiction.

SUMMARY OF THE ARGUMENT

Certiorari should be denied because none of the compelling reasons for granting certiorari set forth in Rule 10 exist in this case. In addition, the Eleventh Circuit's interpretation and application of the motor carrier exemption was legally correct and in accord with settled law, the plain language of the statutes at issue, and with Department of Labor and Department of Transportation regulations. In particular, the Eleventh Circuit correctly followed

settled law in holding that that the Secretary of Transportation has jurisdiction over interstate commerce, including in-state transportation which forms a part of the practical continuity of movement across state lines. The Eleventh Circuit also correctly held that the "incidental to air" exemption from the Secretary of Transportation's jurisdiction is an exemption from economic regulation only, not an exemption from safety regulations such as maximum-hour laws.

REASONS FOR DENYING THE WRIT OF CERTIORARI

Rule 10 of the Rules of the Supreme Court provides that "[a] petition for a writ of certiorari will be granted only for compelling reasons." These reasons, "although neither controlling nor fully measuring the Court's discretion," are as follows:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Rule 10 also states that "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

Here, Petitioners fail to articulate any of the compelling reasons set forth in Rule 10. Instead, Petitioners argue that the Eleventh Circuit erred in interpreting and applying the FLSA's motor carrier exemption. ACLM will explain in Point II below that the lower court did not err. But as an initial matter, ACLM will show that none of the compelling reasons set forth in Rule 10 for granting certiorari exist in this case.

POINT I

NO COMPELLING REASON FOR GRANTING CERTIORARI EXISTS IN THIS CASE.

A. There is No Conflict Among Federal or State Courts, and No Departure from the Accepted and Usual Course of Judicial Proceedings

Petitioners make two principal arguments, neither of which involves points of law on which there is any conflict among federal or state courts.

First, Petitioners argue that the Eleventh Circuit has broadened the reach of the motor carrier exemption by expanding the scope of the Secretary of Transportation's jurisdiction set forth in 49 U.S.C. section 13501. (Petition at 11) Specifically, Petitioners argue that the Eleventh Circuit "read[s] into" that statute's jurisdictional purview the term "interstate commerce," "and defines that term to include in-state transportation which forms a part of the practical continuity of movement across state lines." (Petition at 11-12) As Petitioners acknowledge, there is no conflict among federal courts on this point. The Second, Eighth, Ninth and Tenth circuits have all interpreted the Secretary of Transportation's jurisdiction in the same manner as the Eleventh Circuit did in the instant case. (Petition at fn. 4) This is not surprising, because this Court's own decisions recognize that the Secretary of Transportation (formerly the Interstate Commerce Commission) has jurisdiction over interstate commerce, and that this includes in-state transportation which forms a part of the practical

continuity of movement across state lines. *See Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 568 (1943); *Levinson v. Spector Motor Service*, 330 U.S 649, 685 (1947); *Pyramid Motor Freight Corp. v. Ispass*, 330 U.S. 695, 706 (1947); *United States v. Yellow Cab Co.*, 332 U.S. 218, 228 (1947), *overruled on other grounds by Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984). In short, there is no conflict among the federal courts (or between the federal and state courts) on this matter, and Petitioners do not contend otherwise.

Petitioners' second argument is that the Secretary of Transportation has no jurisdiction over ACLM's airport-seaport trips because the trips are performed within the 25-mile "incidental to air" zone, and thus fall within the "incidental to air" exemption from the Secretary's jurisdiction set forth in 49 U.S.C. section 13506. Petitioners argue that this exemption is a complete exemption from the Secretary's jurisdiction, including safety-related jurisdiction, which is the type of jurisdiction that triggers the motor carrier exemption. The Eleventh Circuit noted that this was an issue of first impression. (Petitioners' Appendix at 22-23) Thus, there is obviously no conflict among the courts on this issue. The Eleventh Circuit held that the incidental to air exemption is an exemption from economic regulation only, not an exemption from safety regulations such as maximum-hour laws. (Petitioners' Appendix at 24-25)

To the extent Petitioners have identified any conflict as to the "incidental to air" issue, the conflict is with *Mielke v. Laidlaw Transit, Inc.*, 102 F. Supp.

2d 988 (N.D. Ill. 2000), in which the district court analyzed a different exemption from the Secretary of Transportation's jurisdiction, involving school bus drivers. Petitioners correctly note that the *Mielke* court's analysis conflicts not only with the Eleventh Circuit's analysis in the decision below, but also with the analyses of several other federal courts, including the Second Circuit Court of Appeals' decision in *Bilyou v. Duchess Beer Distributors, Inc.*, 300 F.3d 217, 223 (2nd Cir. 2002). (Petition at 21 and fn. 12) An analytical conflict with one district court is an insufficient basis for granting certiorari.

Finally, Petitioners do not contend, and there is no basis for finding, that the courts below in this case departed from the accepted and usual course of judicial proceedings.

B. **There is No Decision by a State Court of Last Resort at Issue**

Federal courts issued the decisions at issue in this case. There is no decision by a state court of last resort at issue.

C. **There are No Important Questions of Federal Law at Issue That Have Not Been Settled by this Court, or that Conflict with Relevant Decisions of this Court**

Petitioners' first principal argument is an attempt at reversing settled law. As noted above, this Court's own decisions recognize that the Secretary of Transportation (formerly the Interstate Commerce Commission) has jurisdiction over

interstate commerce, and that this includes in-state transportation which forms a part of the practical continuity of movement across state lines. Thus, the decisions below do not conflict with, but are consistent with, settled precedent.

As for Petitioners' argument pertaining to the "incidental to air" exemption, Petitioners have failed to identify any important questions of federal law raised by this issue. In fact, the issue of whether the incidental to air exemption is a complete exemption from the Secretary's jurisdiction, or merely an exemption from economic regulation, is so arcane that there are no other reported decisions on this issue.

Petitioners contend that the Eleventh Circuit's ruling will have a "far-reaching impact ... on virtually hundreds of thousands of persons engaged in wholly localized transportation of airport passengers[.]" (Petition at 24-25) Yet there is no record evidence to support this allegation, and no reason to believe it is true. The only drivers arguably affected by the Eleventh Circuit's ruling are those drivers within the Eleventh Circuit who drive intrastate trips transporting passengers engaged in the continuous stream of interstate commerce. Drivers who cross state lines (e.g. transporting passengers from Jacksonville to Atlanta) will not be affected by the court's ruling. Nor will drivers who transport passengers who are not on an interstate journey (e.g. Miami residents traveling to Orlando).

In sum, Petitioners have failed to articulate any of the compelling reasons for granting certiorari

set forth in Rule 10. As explained below, Petitioners have also failed to show that the Eleventh Circuit erred in interpreting and applying the FLSA's motor carrier exemption.

POINT II

THE ELEVENTH CIRCUIT'S DECISION WAS CORRECT.

A. Petitioners' "Plain Language" Argument Lacks Merit Because it is In Conflict With all of the Courts that Have Considered the Issue, and With the Department of Labor's Own Regulations

Petitioners argue that the plain language defining the Secretary of Transportation's jurisdiction, at 49 U.S.C. section 13501, does not include single-state trips that are part of the practical, continuous interstate (or international) movement of persons, and that the performance of such trips should not qualify a driver as exempt under the motor carrier exemption. (Petition at 11-12). The *only* authority Petitioners cite in support of their argument is a concurring opinion in a Third Circuit Court of Appeals case. *See Packard v. Pittsburgh Transp. Co.*, 418 F.3d 246 (3d Cir. 2005) (Nygaard, J., concurring in judgment). Both courts below expressly rejected Petitioners' "express language" argument, and noted that Petitioners' argument is in direct conflict with all of the courts that have considered this issue. Indeed, Petitioners' argument conflicts with several long-standing decisions of this Court which held that the question

of whether the Interstate Commerce Commission (now the Secretary of Transportation) has jurisdiction over a particular type of transportation turns on whether the transportation is in "interstate commerce." *See Levinson v. Spector Motor Service*, 330 U.S 649, 685 (1947) ("[U]nder the Motor Carrier Act, the Interstate Commerce Commission has power to establish qualifications and maximum hours of service for those employees whose service affects the safety of transportation...*in interstate and foreign commerce*...") (emphasis supplied); *Pyramid Motor Freight Corp.*, 330 U.S. 695, 706 (1947) (addressing "whether the activities of the respective respondents consisted...of the class of work which is defined...as affecting the safety of motor vehicles *in interstate or foreign commerce*.") (emphasis supplied); *Morris v. McComb*, 332 U.S. 422, 426, 437 (1947) (answering in the affirmative the question "[w]here [employees of a common carrier for hire] during a minority of their time are engaged in the *transportation of interstate traffic* are they exempt...") (emphasis supplied). Accepting Petitioners' argument would require reversal of those decisions.

Petitioners argue that those decisions, particularly the *Levinson* decision, are inapplicable today because the language of the Motor Carrier Act ("MCA") has since been amended. (Petition at 14-15) Petitioners derive this argument, like the rest of their arguments on this issue, from Judge Nygaard's concurring opinion in *Packard*. However, even Judge Nygaard admits that the language between the two versions of the MCA is "similar". *Packard*, 418 F.3d 246, 260 (3d Cir. 2005). Per Judge

Nygaard's opinion, the older version of the statute gave the ICC jurisdiction over "commerce between any place in a State and any place in another State." *Id.* The analogous provision in the current version of the statute grants jurisdiction to the DOT over transportation "between a place in...a State and a place in another State." Thus, neither version of the statute expressly grants jurisdiction over single-state trips that are part of the practical, continuous, interstate or foreign movement of persons or goods within a single state, which is the only type of transportation at issue in this appeal. Consequently, when this Court decided *Levinson*, the Court was not engaged in the interpretation of a version of the statute which was substantively different from or which required a different outcome than the current version of the statute. Petitioners' argument that the current version of the statute warrants a different result is a red herring.

In addition, Petitioners' argument is in direct conflict with the Department of Labor's ("DOL") interpretation of the motor carrier exemption. *See* 29 C.F.R. § 782.7 ("Transportation within a single State is in interstate commerce within the meaning of the Fair Labor Standards Act where it forms a part of a 'practical continuity of movement' across State lines from the point of origin to the point of destination."). Although the DOL's interpretations are not controlling, they "do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

In sum, Petitioners' position is that this Court, the DOL, and every other court that has considered these issues has been mistaken. Petitioners' only support for this argument is Judge Nygaard's concurring opinion. As the Eleventh Circuit noted, "no court since has followed" Judge Nygaard's reasoning. (Petitioners' Appendix at 19) There is no reason for this Court to do so, because the decisions below were correct.

B. Petitioners' "Incidental To Air" Argument Lacks Merit, as Evidenced by the Plain Language of That Statute, and the Department of Transportation's Own Regulations

Petitioners argue that the Secretary has no jurisdiction over ACLM's airport-seaport trips because they are performed within the 25-mile "incidental to air" zone. Petitioners argue that this exemption is a complete exemption from Department of Transportation jurisdiction, including safety-related jurisdiction, which is the type of jurisdiction that triggers the motor carrier exemption.

Petitioners purport to rely on the "plain language" of the statute, and on a district court case, *Mielke v. Laidlaw Transit, Inc.*, 102 F.Supp.2d 988 (N.D. Ill. 2000), in support of this argument. Both courts below rejected Petitioners' argument, and correctly concluded that the "incidental to air" exemption is an exemption only from economic regulation. In reaching that conclusion, the Courts relied primarily on an examination of the legislative history of the statute at issue, and other decisions,

including the Second Circuit's well-reasoned *Bilyou* decision, which rejected arguments similar to Petitioners' arguments. And, the Eleventh Circuit noted that Petitioners' argument is in conflict with the Department of Transportation's own regulations. (Petitioners' Appendix at 25) ("More importantly, the DOT's own regulations define 'exempt motor carriers' as those exempt from economic regulation...but still subject to safety regulations...").

As stated, Petitioners couch their argument as another "plain language" argument, but the Eleventh Circuit, to the contrary, noted that, "Appellants' argument appears to be at odds with the plain language of the statute." The *only* logical conclusion is the conclusion reached by the courts below, i.e. that the "incidental to air exemption" is an exemption only from economic regulation, and not safety regulation.

C. Petitioners Request that the Court Completely Overhaul U.S. Motor Carrier Law and Eviscerate Decades of Precedent

Petitioners claim that they "do not herein ask this Honorable Court to change or amend the FLSA's motor carrier exemption." (Petition at 29) To the contrary, Petitioners are asking the Court to do that and more. As already stated, if this Court were to accept Petitioners' arguments, this Court would have to overrule long-standing Supreme Court decisions from the 1940s, and invalidate the DOL's and the DOT's own interpretations of the statues at issue. This would amount to a complete overhaul of the

Motor Carrier Act, with no Congressional involvement. Petitioners point out that Congress just amended portions of the Motor Carrier Act in 2008. If Congress wishes to further amend the MCA to comport with Petitioners' arguments, Congress is free to do so. There would be no justification for this Court to undertake that job on its own.

CONCLUSION

Respondent requests that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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